17. Howard. p 169 — 1169
11 - Howard. p 163

Judge Dan

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1863.

No 320

WILLIAM F. TUCKER, LIBELLANT AND APPELLANT,

vs.

THE PROPELLER BUCKEYE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1863.

WILLIAM F. TUCKER, LIBELLANT AND APPELLANT,

VS.

THE PROPELLER BUCKEYE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the circuit court of the United States, northern district of Illinois.

Pleas in the circuit court of the United States for the eighth circuit and northern district of Illinois, before the Hon. David Davis, one of the justices of the Supreme Court of the United States of America, and sole judge of said circuit, and on Monday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth year.

WM. H. BRADLEY, *Clk.*

WILLIAM F. TUCKER
v.
PROPELLER BUCKEYE,
And
ILLUSTRIOUS REMINGTON, HIRAM REMINGTON, and ALFRED REMINGTON
v.
PROPELLER BUCKEYE.
} Appeal.

2 Be it remembered, that on the fourteenth day of October, in the year of our Lord one thousand eight hundred and sixty-three, said libellants, by their proctor, filed in the circuit court of the United States for the northern district of Illinois the transcript of the record and proceedings had in the district court of the United States for the northern district thereof, in appeal from said court to the circuit court aforesaid, which transcript is in the words and figures following, to wit:

3 *Record.*

Pleas in the district court of the United States for the northern district of Illinois, before the Hon. Thomas Drummond, judge of said court, and on Wednesday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth year.

WM. H BRADLEY, *Clerk.*

WILLIAM F. TUCKER
v.
PROPELLER BUCKEYE.
} Libel.

Be it remembered that on the 2d day of October, A. D. 1861, said libelant, by R. Rae, esq., his proctor, came into the clerk's office of the district court of the United States for the northern district of

Illinois, and filed his libel against said propeller, together with a stipulation for costs, and thereupon sued out a writ of monition, which said libel, stipulation, and monition, and the return thereon endorsed, reads in the words and figures following, to wit:

Libel.

To the Honorable Thomas Drummond, judge of the United States district court for the northern district of Illinois, in admiralty.

The libel and complaint of William F. Tucker, of the city of Chicago, State of Illinois, against the propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel and furniture, in a cause of contract, civil and maritime, alleges as follows:

First. That the propeller Buckeye, now lying at the port of Chicago, is a vessel of over twenty tons burthen; was, at the time the cause of action hereinafter mentioned, enrolled and licensed and engaged in the business of commerce and trade between ports and places in different States upon the lakes and the navigable waters connecting the same.

Second. That on or about the twenty-fourth day of July, A. D. 1860, the said propeller Buckeye, then being at the port of Ogdensburgh, in the State of New York, and bound on a voyage to the port of Chicago, in the State of Illinois, took on board divers wares and merchandise, the goods and property of your libellant, of great value, to wit: the value of twenty-four hundred dollars and seven
5 cents, which will more fully appear by the bill of lading, a copy of which, containing a schedule thereof, is hereunto annexed, marked "A," and which libellants prays may be taken as part of this libel; that at the time said goods were so taken on board said propeller said goods were in good condition.

That said goods were, by said contract of affreightment, to be safely conveyed, in like good condition, from said port of Ogdensburgh to the port of Chicago, the dangers of navigation alone excepted.

That on the day and year last aforesaid, said propeller broke for her voyage, being laden with an assorted cargo belonging to divers persons unknown to your libellant of great value, the value whereof is unknown to your libellant.

Third. That half-past 5 o'clock on the morning of the twenty-eighth day of July, A. D. 1861, said propeller, whilst lying at the port of Detroit, took fire about her boilers from some cause unknown to your libellants, and which cause your libellant is unable to discover, by reason of the master of said propeller not sufficiently setting
6 forth all the facts and particulars of the discovery of said fire, its precise locality, the condition of said boilers, the stoyage of said cargo, and all other attending facts and circumstances in his protest purporting to be a narration of the burning aforesaid. Your libellant prays that said master and men shall answer fully under oath all and singular the interrogatories here propounded for them to answer for greater certainty in the premises.

Fourth. That whilst said propeller was so on fire, the fire department at Detroit came to the rescue of said propeller, and with the steam fire-engines put out the fire, and throwing large quantities of water upon the vessel and her cargo, and overflooding her decks, and throwing large quantities of water into her hold, in consequence of which the said goods of your libellant, so ladened aboard said propeller, were greatly damaged, and your libellants suffered loss to the amount of fourteen hundred and sixty-nine 77-100 dollars.

Fifth. That the custom of merchants and the course of the admiralty and merchant laws in that said damage is, notwithstanding the exception of fire in the said contract of affreightment in such
7 cases happening, a case of general average loss.

Yet nevertheless said propeller permitted and allowed, without the consent of your libellant, the said cargo to be broken up and delivered to divers parties unknown to your libellants before an appraisement was had of said cargo, so that your libellant is unable to ascertain the amount due to your libellant from the respective consignments aforesaid, by reason of which wrongful delivery your libellant claims that the whole of said damage should be paid by said propeller.

Sixth. That there is now due, and unpaid to your libellant for said damage, the sum of fourteen hundred sixty-nine 77-100 dollars, which he has demanded of the agents of said vessel, but which they refuse to pay, either the whole or any part thereof.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, libellant prays that process may issue against said propeller, her boilers, &c., according to the course of admiralty, and that the said propeller may be arrested, and that the owners and
8 master may aver, under oath, all and singular the premises, and that said propeller be condemned and sold to pay the damage aforesaid, together with costs, and that the honorable court would be pleased to grant such other and further relief in the premises as such shall require.

WM. F. TUCKER.

Sworn and subscribed this 2d Oct., A. D. 1861.

R. RAE, *U. S. Com.*

A.

[Triplicate.]

Western Transportation *via* Ogdensburgh.

Northern Transportation Company, John Hocking, agent, No. 7 State street, Briggs House, Chicago, Ill.

32 2 c. per 100 lbs.
2 " " package.
35 nt. co.

Rates:

1st class, —— cents per 100 lbs.
2d class, —— cents per 110 lbs.
3d class, —— cents per 100 lbs.
4th class, —— cents per 100 lbs.
—— —— cents per 100 lbs.
As per classification on back.

BOSTON, *July*, 18, 1861.

Received from H. Athens & Co. the following packages in apparent good order, contents and value unknown:

9	Seventy-two boxes	72
	Six baskets wine	6
	Ten ch. tea	10
	One qr. cask	1
	One tierce	1
	One pipe gin	1
	Twenty-one bbls.	21
	2 h'f do.	2
	Four kegs	4
		118 p'k'g's.

Marked and numbered as in the margin, which the Vermont Central Railroad line agrees to forward to Ogdensburgh, N. Y., and the Northern Transportation Company agrees forward them by steam, and deliver to their agents in Chicago, upon payment of freight therefor, as noted in the margin, subject to the following rules and conditions, to wit: That the owner or shipper hereby assumes the risk of loss or damage by lake or river navigation, or while in transhipment, fire, leakage of all kinds of liquids, breakage of all kinds of glass and glass ware, or articles packed in glass, stoves, and stove furniture, castings, machinery, damage or loss of any article the bulk of which renders it necessary to be shipped in open cars, and
10 damage from unavoidable or accidental delays, damage to all articles occasioned by weather or natural tendency to decay. It is also expressly agreed betweed the parties that the said line shall not be held accountable for any damage or deficiency in packages of goods, if delivered in good order at the point contracted to.

And in case of loss or damage of any of the goods named in this bill of lading, for which the Northern Transportation Company may be liable, it is agreed and understood that they shall have the benefit of any insurance effected by or for account of the owners of said goods; and in case of loss on the lakes, the freight and charges to, or at the place where, such may occur, shall be paid by the owner of said goods. Freight contracted over the several railroad lines is subject to the conditions and rules adopted by the railroad companies. Goods in bond subject to custom-house regulations and expenses.

JOHN HOCKING, *Agent.*
P'r YOUNG.

Libellant's Stipulation.

11 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

District court, ——— term, A. D. 18—.

Whereas a libel was filed in this court on the second day of October, A. D. 1861, by William F. Tucker, against the propeller Buckeye, her engines, boilers, machinery, &c., boats, tackle, apparel, and furniture, for the reason and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and Robert Rae, surety, the parties hereto, consenting and agreeing that in cause of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs
12 as shall be awarded against ——— by this court, or, in case of appeal, by the appellate court.

WM. F. TUCKER.
R. RAE.

Taken and acknowledged this day of , A. D., before me.
——— ———.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

R. Rae, party to the above stipulation, being duly sworn, deposes and says, that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars, over and above all his debts and liabilities.

R. RAE.

Sworn this 2nd day of October, A. D. 1861, before me,
FRED. W. COLE,
U. S. Com.

Endorsed: Filed Oct. second, 1861.
WM. H. BRADLEY, *Clk.*

Monition.

THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America, to the marshal of the northern district of Illinois, greeting: Whereas a libel hath been filed in
13 the district court of the United States, in and for the northern district of Illinois, on the second day of October, in the year of our Lord, one thousand eight hundred and sixty-one, by William F. Tucker, against the propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, for reasons and causes

in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all, and singular, the matters in said libel articulately propounded, and this court would be pleased to pronounce for the sum of fourteen hundred sixty-nine dollars and seventy-seven cents, the damages alleged in said libel, besides the costs of suit. You are therefore commanded to attach the said propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in some
14 daily newspaper printed in the city of Chicago for fourteen days previous to the day of trial, and by notice posted up in the most public manner for the space of fourteen days, at or near the place of trial of such seizure and libel, to all persons claiming the said propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of the said libel, and that they be and appear before the said court, to be held in and for the northern district of Illinois, at the United States court-room, in the city of Chicago, in said district, on the first Monday in November next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return together with this writ.

[L. S.] Witness the Hon. Thomas Drummond, judge of the said court, the second day of October, in the year of our Lord one
15 thousand eight hundred and sixty-one, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Clerk.*

I have executed this writ, by attaching the within named propeller Buckeye, this 18th day of October, A. D. 1861, and have further, on the same day, released said propeller from custody, upon the claimant giving bonds for her release according to law.

J. R. JONES, *U. S. Marshal.*
By GEO. L. WEBB, *Deputy.*

Know all men by these presents, that Stephen Clary, of Chicago, Illinois, as principal, and Zebulon M. Hall of Chicago, county of Cook, and State of Illinois, as sureties, are held and firmly bound unto William F. Tucker, in the penal sum of three thousand dollars, to be paid unto the said William F. Tucker, which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at Chicago, the 18th day of October, in the year of our Lord, one thousand eight hundred and sixty-
16 one. Whereas, in a certain cause, civil and maritime,

moved and prosecuted in the district court of the United States of America for the northern district of Illinois on behalf William F. Tucker, against the propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said propeller, her boilers, engines, machinery, boats, tackle, apparel and furniture, which said warrant is now in the hands of J. R. Jones, marshal of the said district, as by virtue of which said warrant the said propeller, her boilers, engines, machinery, boats, tackle, apparel, and furniture, has been arrested by J. R. Jones, marshal, and are now in his custody.

Now, therefore, the condition of this obligation is such, that if the above bounden Stephen Clary, the claimant of said propeller, her engines, boilers, machinery, boats, tackle, apparel and furniture, shall well and truly abide and answer the decree of said court in the aforesaid cause, then this obligation shall be void; otherwise
17 it shall remain in full force and virtue.

STEPHEN CLARY, [SEAL.]
ZEBULON M. HALL, [SEAL.]

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

Zebulon M. Hall, being duly sworn, depose and say, that he is a resident of the northern district of Illinois, and that he owns property in said district, subject to execution, worth three thousand dollars over and above all just debts and liabilities.

ZEBULON M. HALL.

Sworn to and subscribed before me this 18th day of October, A. D. 1861.

Approved.

WM. H. BRADLEY, *Clk.*
THOMAS DRUMMOND.

Endorsed: Filed this 4th day of Nov., A. D. 1861.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 6th day of November, A. D. 1861, the said the Northern Transportation Company, the claimant herein, came by its proctors, and filed its claim and stipulation for
18 costs in the words and figures following, to wit:

To the Honorable Thomas Drummond, judge of the district court of the United States, for the northern district of Illinois:

The Northern Transportation Company of Ohio, duly incorporated in and by the virtue of the laws of the State of Ohio, owners of the propeller Buckeye, her tackle, boilers, engines, apparel, and furniture, intervening for its interest in the said propeller Buckeye, her tackle, boilers, engines, apparel and furniture, appears before this honorable court, and claim the said propeller Buckeye, her tackle, boilers, engines, apparel and furniture, and states, that it is the true and bona fide owner thereof, and that no other person is the owner thereof; and thereupon, the said claimant prays that this honora-

ble court will be pleased to decree a restitution of the same to it, said Northern Transportation Company, and otherwise right and justice to administer in the premises.

PHILO CHAMBERLAIN,
Vice President.

Sworn October the 25th, A. D. 1861, before me.

E. B. TOWNE,
Notary Public.

19 Endorsed: Filed Nov. 6, 1861.

W. H. BRADLEY, *Clerk.*

District court of the United States for the northern district of Illinois.

Whereas a libel was filed in this court on the second day of October, A. D. 1861, by William F. Tucker, against the propellor Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, for the reason and causes in the said libel mentioned; and whereas a claim has been filed in the said cause by the Northern Transportation of Ohio Company, and the said Northern Transportation Company and Stephan Clary, surety, the parties hereto, consenting and agreeing, that in case of default or contumacy on the part of the claimant or Stephen Clary, surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of two hundred and fifty dollars
20 conditioned, that the claimant above named shall pay all such costs as shall be awarded against them by the court, or, in case of appeal, by the appellate court.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO.
B. P. CHAMBERLAIN, *Vice Pres.*
STEPHEN CLARY.

Taken and acknowledged this 6th day of Nov., A. D. 1861, before me,

WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed this 6th day of Nov., 1861.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 5th day of December, A. D. 1861, said respondent, the Northern Transportation Company, came and filed its answer herein, in the words and figures following, to wit:

United States of America, northern district of Illinois, in admiralty.

The answer of the Northern Transportation Company of
21 Ohio, a company incorporated under the laws of the State of Ohio, to the libel filed in the district court of the United

States within and for the northern district of Illinois, by William F. Tucker, against the propeller Buckeye, her tackle, engines, boilers, apparel, and furniture.

And now comes the said Northern Transportation Company, and saving and reserving to themselves all and all manner of exceptions to said libel, and the several matters and things therein contained, answering, say:

First. They are the true and bona fide owners of said propeller Buckeye, her tackle, apparel, and furniture, boilers, and engines, and no one else is the owner thereof.

Second. That the first articulation of said libel is true.

Third. That it is true that said propeller was at the port of Ogdensburgh, and did take on board the goods mentioned in said bill of lading, consigned and shipped as in said bill of lading is described, and divers other goods, wares, and merchandise, a copy of
22 which bill of lading is attached to this answer. Respondent does not know whether the libellant is the owner of said goods so shipped and consigned, nor do they know the value thereof, and therefore they neither admit nor deny the allegations in said articulations in regard to the value or ownership of said property, but demand strict proof in regard thereto that said goods were consigned to the Briggs House, Chicago, and purported to be shipped by .

That they do not know the condition in which said goods were at the time they were shipped on said propeller; that said bill of lading states the conditions and terms of said shipment; and they refer for greater certainty to the same, that the owner or shipper assumed, in and by said bill of lading, the risk of loss or damage by lake or river navigation, or while in transhipment, fire, leakage of all kinds of liquids, breakage of glassware or articles packed in glass, stoves and stove furniture, castings, machinery, damage from unavoidable or accidental delays, damage to all articles occasioned by weather
23 or natural tendency to decay; and the allegations in said libel that the dangers of navigation were alone excepted is untrue. It is true that said propeller did start on her voyage with an assorted cargo about the day therein stated. That they do not know the value of the cargo laden on board of said propeller.

Fourth. Respondent, further answering, says, to said third articulation, that said propeller Buckeye proceeded on her voyage, and arrived in safety at the port of Detroit about the 28th day of July, A. D. 1861; that said propeller, when she left the port of Ogdensburgh, and when she arrived at the port of Detroit, and when the accident happened hereinafter set forth, was staunch, tight, well fitted, found, and manned, and guarded against the dangers of navigation and fire, and for her intended voyage; and that the accident hereinafter mentioned did not result from any fault or negligence on the part of officers and crew and owners of said propeller, or any insufficiency or insecurity in said propeller Buckeye, her tackle,
24 engines, boilers, apparel, or furniture. That it is true, as in said articulation mentioned, that about half-past five o'clock a. m. of said 28th day of July, A. D. 1861, at the port of Detroit, a

fire broke out in said propeller about her boilers, as in said articulation alleged; that respondent cannot say how the fire originated, but originated in causes to your respondent unknown, but, as they allege and charge, without any fault or negligence of theirs or the officers or crew of said propeller, or of your respondent; that the facts connected with said fire are as set forth in the answer to the fourth articulation of said libel; that the main portion, if not all, of said cargo was stowed in the main or fore hold of said propeller under deck; that, at the time of the happening of the fire hereinafter set forth, the master of said propeller, Alfred W. Rosman, appeared before Addison Mandall, a notary public of Detroit, in the county of Wayne and State of Michigan, and noted a protest which they are ready to produce when required, and which they submit to the court, is as clear and definite as they could make it, and which was
25 noted in due form of law.

Fifth. Respondents, further answering as to said fourth articulation, says that said fire broke out near the forward part of the boiler at about five and one-half o'clock a. m. on the 28th day of July, A. D. 1861; that the first knowledge they had of the fire was that the flames burst out about said boiler; that the officers and crew proceeded to use every exertion to put out said fire, and while they were doing so the steam-engines in the charge of the fire department of the city of Detroit came to said propeller and took charge of the extinguishing of the fire, taking it out of the hands of the officers and crew of said propeller, and extinguished said fire by throwing water on the same; that the goods of said Tucker were stored in the main hold of said propeller, and under deck; that said Tucker's goods were stored under the hatch in the fore or main hold, as well as the entire cargo, and all the cargo was alike exposed to the fire; that no more injury was done to said propeller and cargo than
26 was necessary to extinguish the flames; that water was discharged upon said vessel and cargo, and all the cargo and the vessel was alike exposed to danger from fire, and injury from the water used to extinguish the flame; that danger or injury from fire is one of the exceptions contained in the bill of lading; that none of the cargo was sacrificed for the safety of the rest, or of the vessel; and if the plaintiff's goods were injured by the water, it resulted from the kind of goods, and the leakage of the boxes and cases in which were the same. Had they been tight they would not have been injured.

Sixth. Respondent, for answer to said fifth articulation, says that they are informed, and believe, and so charge the fact to be, that it is not true by the custom of merchants and the course of the admiralty and maritime law it is a case of general average, as in said articulation alleged, and they deny that *that* it is a case for general average; and they deny that the whole of said damages, even if it is a case of general average, should be paid by the propeller; on the con-
27 trary, respondents allege and charge, if, in the opinion of the court, said claim should be decided to be a claim for general average, and which they are informed, and believe, and so charge the fact to be, is not the case, that then the libellant has only a claim for

such amount as by the law of such case he would be entitled to on a general average being made up, which your respondent claims can be ascertained; and if there is a claim for general average, or if this court should decide the libellant has a claim, that the same may be ordered to be made up, and that the several owners of the freight on board may be compelled to contribute, and for which purpose they stand ready to produce, when required, the bills of lading of said voyage, showing the freight list; but they must emphatically deny that the libellants are entitled to general average, or that they have any claim against your respondents or said propeller.

Seventh. Respondent, for answer to the sixth articulation, says that they deny said articulation, and they deny that the libellant has a claim against said propeller for $1,469 77, or any sum;
28 that they have no knowledge to what extent said goods were injured.

Respondent, having fully answered said libel, pray to be herein dismissed with their costs, and for restitution, &c.

THE NORTH'N TRANSPORTATION COMP'Y OF OHIO,
By PHILO CHAMBERLAIN, *V. President.*
H. F. WAITE, *Respondent's Proctor.*

UNITED STATES OF AMERICA,
Northern District of Illinois.

Philo Chamberlain, being duly sworn, says he is the vice president of the Northern Transportation Company of Ohio; that he has heard the above answer read, and he knows the contents thereof, and that he believes all the several matters and things therein contained to be true.

PHILO CHAMBERLAIN.

Subscribed and sworn to this 26th day of November, A. D. 1861, before me.

EDWARD P. TOWNE, [SEAL.]
Notary Public.

Endorsed: Filed Nov. 29, 1861.

WM. H. BRADLEY, *Clerk.*

Refiled Dec. 5, 1862.

WM. H. BRADLEY, *Cl'k.*

29 *Amendment to libel.*

To the Hon. Thomas Drummond, judge of the United States district court, in admiralty:

The amended libel of William F. Tucker, in the matter of Tucker *vs.* The Propeller Buckeye, in answer to the answer of the respondent, *sec. reg.*

That said libellant alleges that said loss mentioned in said libel and answer was occasioned wholly by the want of care on the part of the

master and crew of said propeller Buckeye, "and that they have clearly suffered damages to the amount of $2,100," and therefore pray that said propeller Buckeye, her engines, &c., be sold, &c., to answer the said damage mentioned in said libel, and to give such other relief as they may be entitled to in the premises.

R. RAE,
Proctor for Libellant.

Endorsed: Filed March 5, 1862.

WM. H. BRADELY, *Clerk.*

The words written in red ink in the above amendment to libel were inserted as a further amendment on the hearing before
29 Judge Davis, on the appeal in the circuit court on the 21st day of October, A. D. 1863.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 5th day of December, A. D. 1862, in the record of the proceedings of said court, in said cause, is the following entry to wit:

WILLIAM F. TUCKER
vs.
PROPELLER BUCKEYE. } Libel.

Now come the parties, by their proctor, and thereupon this cause is set down for hearing on the libel, answer, and proofs on file; and after hearing the arguments of advocates, the court takes said cause under advisement.

Proofs.

Deposition of Willard F. Wentworth, taken before George R. H. Hughes, a notary public in and for the city of Chicago, county of Cook, and State of Illinois, at the office of Robert Rae, No. 10,
31 Doles Building, in said city, on Thursday, the 9th day of October, A. D. 1862.

WILLIAM F. TUCKER
vs.
PROPELLER BUCKEYE. } Admiralty.

Willard F. Wentworth, being duly sworn on behalf of the libellant, deposes and says: I am bookkeeper for William F. Tucker, my age is twenty-three, and residence, Chicago. I know that Mr. Tucker was the owner of the bill of goods mentioned in the libel in this cause, and which were shipped on the propeller Buckeye on the 23d of July, A. D. 1861, or about that time, at the port of Ogdensburgh. They arrived here in August, about the 7th or 8th of the month. I saw all the goods after they arrived here. They were damaged by water and smoke. The sugar, which was part of them, was black with smoke and soot.

WILLARD F. WENTWORTH.

32 *Respondent's proof.*

WILLIAM F. TUCKER
vs.
THE PROPELLER BUCKEYE.

The deposition of Alfred W. Rosman taken before John Lyle King, commissioner, at Chicago, on the fifth day of July, A. D. 1862.

My name is Alfred W. Rosman. I reside in Chicago. I am a sailor, and have been since 1834. I am now captain of the propeller Buckeye, and have been since she was built. She is six years old this fall. I was her captain during the entire season of '61; the Buckeye sailed on Wednesday, 24th day of July, 1861, from the port of Ogdensburgh, for the port of Chicago. She arrived at Detroit on the 28th of July, in the morning. Cape Vincent is between Ogdensburgh and Detroit. When she left Ogdensburgh and Cape Vincent and arrived at Detroit she was staunch, tight, well fitted, well manned. She was well guarded and protected against the dangers of navigation and fire. The propeller arrived at Detroit
33 about five o'clock in the morning. When we got alongside of the dock we went to wooding, and the first I knew of it, being in my office writing a letter, I heard a "muss" and hallooing down below; I ran down and saw a blaze coming out of the coal hatches, and by the smoke-pipe also. The second engineer was on watch. I told him to go down and start the pony. He said he had tried it, and it was so hot he could not get at it. I told him to try again. He made the second attempt but could not start it; he could not get to it. The engineer—the head engineer—told him to start the pony. I told him to start the pony if a possible thing. We tried it, and could not get to it. We dipped water out of the river in buckets, and threw it into the hold so far as they could get at the fire.

Question. State, if you can, where the fire first broke out.

Ans. It broke out right over the boiler, underneath the deck, the main deck.

Question. About how far from the forward end of the boiler?

Ans. I should think immediately over the forward end.
34 When the fire was first discovered the big bell was rung by my order. The effect of using the buckets to throw on water was to keep the fire in check. While we were working with the buckets the fire-engines of the city of Detroit came down to the dock and went to work and put out the fire, filled the vessel with water, and that sunk her; the water of the river ran into the gangways; that put out the fire.

Question. What protection, if any, had the propeller where the fire broke out against fire?

Ans. It was zinced over and around the boiler sides, end, and top, and where the fire broke out.

Question. What is the distance from the top of the boiler to the under side of the deck?

Ans. Nineteen inches.

Question. What is the distance from the forward end of the boiler to the bulkhead?

Ans. Twenty-five inches. It is twenty-two inches from the side of the boiler to the bulkhead. From the top of the flues to the under side of the deck is three feet 2 inches; there is water and steam to the top of the boiler from the top of the flues. The fire is at the after end of the boiler. The point where the fire originated to the after end of the boiler was about seventeen feet. The zinc extended
35 all around the boiler, except the after end where we put in the fuel, and underneath where there is sheet iron. The zinc protection, as we had it, was not a usual one, or deemed necessary. The space between the wood of the under side and of the deck and of the bulkhead and the boiler is greater than usual, or than is required by the inspectors, and is considered a sufficient protection. I can't tell or account for the mode in which the fire originated; and at the time the fire was discovered there was on duty on board the propeller seventeen hands, and all doing duty. Before the Detroit steam-engines came, every exertion possible was made by the crew to put out the fire; every exertion and care was used to guard against fire before it broke out, to prevent fire, and to but it out when discovered. The fire was accidental, originating in causes unknown to me. The steam-engines, after they had flooded the vessel, then turned in and pumped her out and set her afloat by emptying the water. In about three hours after she was pumped out she proceeded on her voyage to Chicago.

Her cargo, including the goods in controversy in these two suits,
36 was stored in the main hold under the deck. The vessel and cargo were alike exposed to damage from fire and injury from water used in extinguishing the flames. Had the goods of the libelants been in water-tight packages they would not have been injured. The injury, if any, must have resulted from leakage of the boxes and cases. No more water was used than was necessary to put out the flames. I noted a protest at the time, and this is it attached hereto, and marked "B." On that voyage we used wood and coal for fuel for our furnace and no other combustible matter. The wood was a mixture of hard and soft wood. On that voyage I was on deck from one o'clock of that night till we reached Detroit. It was my watch; she was carrying sixty-five pounds of steam, which was then her ordinary gauge; she was allowed to carry seventy pounds. The second mate, a wheelsman, a lookout, second engineer, a fireman, and one deck hand and myself were on watch, and from one o'clock until all hands were called, just before reaching Detroit. That was a full watch; the wheelsman was changed at four o'clock.

37 *Cross-examination.*

Question. Do you know whether or not the fire-cocks at the time of the fire were in such a condition that they could be used?

Ans. I do not know.

Question. Had you any information upon that point? If so, from whom, and what was it, and where did you obtain it?

(Objected to.)

Ans. I had such information. It was from Mr. Whitehouse, the second engineer, and it was obtained right at the time of the fire. He said he could not open the fire-cocks. I don't know exactly where the fire first broke out, within two or three feet.

Question. When you say that there was water and steam from the top of the flues to the top of the boiler, you mean that there was water and steam in the boiler.

Ans. Yes, sir.

Question. Is it usual for shippers by the Northern Transportation Company to put paper in packages that won't leak?

Ans. I don't know; there might be some shipped that way.

Question. Do you know whether, when the vessel arrived
38 at Detroit, it was possible to open the fire-cocks or not?

Ans. I do not know; I could not know without trying.

Question. How far was it from the top of the boiler to the under side of the zinc?

Ans. About nineteen inches.

Question. What did you ring the big bell for?

Ans. To alarm the citizens of Detroit, so as to have them help put out the fire.

Question. Did you ring the bell so as to get the assistance of the Detroit fire department?

Ans. Yes, sir.

Question. Do you carry passengers?

Ans. Yes, sir; we had about forty that trip.

Question. Where do you keep your wood and coal?

Ans. The coal in coal-bunkers, on each side of the boiler; the wood on deck.

Question. How far are these coal-bunkers from the boiler?

Ans. Twenty-two inches.

Question. Did the engineer tell you the reason they could not start the poney?

Ans. Yes; it was too hot to get to it.

Question. You say you do not know how the fire originated. How, then, do you know it was accidental?

Ans. Because nobody could get there to set it on fire.

39 Question. Is it impossible for a man to get in there?

Ans. It is not. It is impossible to go there when steam is on.

Question. Would it be impossible to set a fire within two or three feet from the front end of the boiler?

Ans. It would not.

Question. Was it impossible for a man to set this fire where you conceive it to have originated?

Ans. I think it is. It would be impossible without some of our crew knew it.

Re-examination.

Question. The measurements you have given, how were they arrived at?

Ans. I measured them myself.

Question. State the construction of the fire-box, as to its being surrounded by water.

Ans. It is surrounded on all sides by water, six inches at the bottom, greater distance at the sides and top.

Question. State whether or not the fire-engines of Detroit were necessary to put out the fire.

Ans. They were; without them we could not have extinguished the flames.

Re-cross-examination.

40 Question. How came the second engineer to tell you that the fire-cocks could not be used.

Ans. When I told him to start the "pony" he said he could not get at the pony, it was so hot, and he could not start the fire-cock; it was brass and ran into the end of the boiler.

Question. (By claimant's attorney.) State the position of the fire-cock.

Ans. It is in the forward end of the boiler, with a rod running to the after end to open it by.

Question. If it was so hot as to prevent your starting the pony, what effect would that heat have upon the fire-cock.

Ans. I should think it would have some effect in preventing the opening the fire-cock by expanding or contracting the metal.

Question. Were you released before being sworn to testify in this case? and if so, produce the release.

Ans. I was released, and this is the release executed and delivered to me. It is marked "C," and is hereto attached.

A. W. ROSMAN.

Exhibit "B."

A. W. Rosman, master of the steam propeller Buckeye, of Cleveland, Ohio, of the burthen of three hundred and seventy-eight
41 tons, or thereabouts, laden with merchandise, bound from Ogdensburgh, in the State of New York, whence she sailed on Wednesday, the twenty-fourth day of July instant, at one o'clock p. m., for the port of Chicago, in the State of Illinois, came before me, a notary public, in and for the county of Wayne, in the State of Michigan, residing in the city of Detroit, and declared that said propeller, bound as aforesaid, with said merchandise on board, in the route of her said voyage, arrived at said Detroit at half-past five o'clock in the morning of the twenty-eighth day of July, A. D. 1861, and came to her usual wharf for the purpose of taking on passengers, with the intention of remaining there about three-quarters of an hour, and then proceeding on her voyage; that said master was in the office of the boat writing a letter, and heard a noise below; that he rushed out at once and found that the vessel had taken fire about her boiler; this was after she had lain at the wharf about half an hour; that an

alarm was at once given, and the fire department of Detroit came to the rescue, took charge of the fire, and with the steam fire-engines put out the fire, throwing large quantities of water upon the
42 vessel and her cargo for two hours, and overflooding her decks and throwing large quantities of water in her hold; that the management of the extinguishing the fire was under the immediate directions of said fire department, which ceased its labors when it was ascertained that the fire was extinguished. And said master, finding that the vessel has received but little damage, is desirous of proceeding on his voyage, and desires me to notice this entry of protest, fearing damage to said cargo from the water aforesaid, with the privilege of extending the same on arriving at his port of destination.

This done and protested at Detroit this twenty-eighth day of July, A. D. 1861, at ten and a half o'clock a. m.

ADDISON MANDELL,
Notary Public, Wayne Co., Mich. [SEAL.]

STATE OF MICHIGAN,
County of Wayne, ss:

Alfred W. Rosman, being duly sworn, says that he has heard read the above and foregoing entry of protest of the propeller Buckeye, and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

43 A. W. ROSMAN.

Subscribed and sworn to before me this 28th day of July, A. D. 1861.

ADDISON MANDELL,
Notary Public, Wayne Co. Mich.

Exhibit "C."

UNITED STATES OF AMERICA,
Northern District of Illinois,

WILLIAM TUCKER
v.
PROPELLER BUCKEYE, NORTHERN TRANSPORTATION COMPANY, claimants.

ILLUSTRIOUS REMINGTON *et al.*
v.
PROPELLER BUCKEYE, NORTHERN TRANSPORTATION COMPANY, claimants.

Suits pending in the United States district court within and for said district, in admiralty.

For value received in the Northern Transportation Company, owners and claimants of said propeller Buckeye, her engine, tackle, apparel, and furniture, do hereby release Alfred W. Rosman, master of the propeller Buckeye, a witness to be offered by us on the

44 trial of each of the above causes, of and from any claim and demand which he now or may hereafter have against him, by reason of the determination of this suit, or any matter, directly or indirectly, brought or to be brought in question in this suit, either for us or against us, and we do release him from all demands connected with or depending upon the subject matter of these suits, or either of them, or any part of the same, or thing which he may have or may hereafter have against him.

In witness whereof, we have hereunto set the official seal of said company this third day of June, A. D. 1862, by the president thereof.

R. PELTON, *President.* [SEAL.]

WILLIAM F. TUCKER,
v.
PROPELLER BUCKEYE, NORTHERN TRANSPORTATION COMPANY, claimant.

District court in admiralty, within and for the northern district of Illinois.

S. C. Sturdevant, being duly sworn, says: I am superintending engineer of the northern transportation line of boats. I have
45 been engaged in this business for about seven years. I have been a steam engineer for fifteen years. I am superintendent over fifteen boats of this company. I am acquainted with the propeller Buckeye; have known her ever since she has been built. I superintended the fitting out of her in the spring of 1861. Her fire hold was sheathed, according to law, with sheet-iron. She had two fire force-pumps, one working by steam, the other by hand, in good condition, and approved by the government inspector at the time, and a hundred and fifty feet of hose; that was all that was required, I believe. She was inspected in Cleveland, the 17 of April, 1861, by the government inspectors, Benj. H. Stannard and De Forrest, and I was present when they so inspected her. They pronounced everything right and in good order, and gave her a certificate. There was nothing said about her being protected from fire, but pronounced everything right. In my opinion she was well guarded and protected against fire. She was well provided for putting out
46 fire; everything was provided which was required. There was a fire-cock in the boiler. I superintended the putting of it in. It was such as is used on other boats when they are used at all. It was a good fire-cock; it worked well. I was not aboard when the disaster occurred. I know where the engines were placed; they were stationary. I have been in the employ of this company for 11 years. I was aboard of the boat for a short time, as a practical engineer, for a trip or two. They drilled their men every day below in the use of the engine and hose in washing down the decks. They were not drilled with reference to fires, but in cleaning decks. The mate drilled them, the men, by attaching the hose, leading the hose

about the deck and applying the brakes. He gave them instructions how to handle the hose. I do not know whether he drilled them in the use of buckets. I have seen the mate instructing them. He generally drilled them about an hour at a time; he drilled them with the pump and hose and brooms. It does require some science to
47 wash down the decks and get them clean. I do not know how long the deck hands had been aboard the Buckeye at the time of the fire.

S. C. STURTEVANT.

This deposition may be read without formal certificate, it have been taken by agreement and sworn to before me, Robert Rae, U. S. commissioner, and is to be used in the two cases against the propeller Buckeye. Oct. 29, 1862.

CHASE, STORRS & MUNSON,
Proctors for J. Remington et al.
WAITE & TOWNE,
For Defendants.

Endorsed: Filed Oct. 28, 1862.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 30th day of September, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

48 WILLIAM F. TUCKER
v.
PROPELLOR BUCKEYE.
ILLUSTRIOUS REMINGTON, HIRAM REMINGTON, and ALFRED REMINGTON
v.
PROPELLER BUCKEYE.
} Libel.

Now come the parties, by their proctors, and by agreement, the above-entitled causes are consolidated, and the cause having heretofore been submitted to the court, and the court having fully considered, and being now fully advised thereon, pronounces for the respondents.

It is thereupon considered and adjudged by the court, that the libels be dismissed without prejudice at the costs of the libellants, and that the respondent do have and recover of and from the said libellants the costs and charges herein to be taxed, and that execution issue therefor against the said libellants and their stipulators, and the libellants, by their proctor, pray an appeal to the circuit court.

49 *Record.*

Pleas in the district court of the United States for the northern district of Illinois, before the Hon. Thomas Drummond, judge of said court, and on Wednesday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

ILLUSTRIOUS REMINGTON, HIRAM REMINGTON, and ALFRED D. REMINGTON
v.
PROPELLOR BUCKEYE. } Libel.

Be it remembered, that on the 18th day of October, A. D. 1861, said libellants, by Chase, Munson, Saroin, their proctors, came into the clerk's office of the district court of the northern district of Illinois and filed their libel and stipulation for costs, and sued out a
50 monition thereon, which said libel, stipulation, and monition, and the marshal's return thereon, are in the words and figures following:

Libel.

To the honorable Thomas Drummond, judge of the United States district court for the northern district of Illinois, in admiralty.

The libel and complaint of Illustrious Remington, Hiram Remington, and Alfred D. Remington, partners under the firm-name of I. Remington & Sons, of the State of New York, against the propeller Buckeye, her boiler, engines, machinery, boats, tackle, apparel, and furniture, in a cause of contract, civil and maritime, alleges as follows:

First. That the propeller Buckeye, now lying at the port of Chicago, is a vessel of over twenty tons burthen; was, at the time of the causes of action hereinafter mentioned, enrolled and licensed and engaged in the business of commerce and trade between ports and places in different States upon the lakes and the navigable waters connecting the same.

Second. That on or about the twenty-fifth day of July, A. D. 1861, the said propeller Buckeye, then being at the port of Cape
51 Vincent, in the State of New York, and bound on a voyage to the port of Chicago, in the State of Illinois, took on board divers wares and merchandise, to wit: Two hundred thirteen and and eighty one hundredths (213 $\frac{80}{100}$) reams of paper or stationery, the goods and property of your libellants, of great value, to wit, of the value of eight hundred dollars, the items of which will more fully appear by a schedule thereof hereunto annexed, marked "A," and which libellants pray may be taken as part of this libel; that at the time said goods were so taken on board said propeller said goods were in good condition; that said goods were, by said contract of affreightment, to be safely conveyed in like good condition from said port of Cape Vincent to the said port of Chicago, the dangers of navigation alone excepted; that on the day and year last aforesaid said propellor broke for her voyage, being laden with an assorted cargo, belonging to divers persons unknown to your libellants, of great value, the value whereof is unknown to your libellants.

Third. That at one half-past five ($5\frac{1}{2}$) o'clock on the morning of the twenty-eighth day of July, A. D. 1861, said propeller, whilst
52 lying at the port of Detroit, took fire about her boilers from

some cause unknown to your libellant, and which cause your libellants is unable to discover, by reason of the master of said propeller not sufficiently setting forth all the facts and particulars of the discovery of said fire, its precise locality, the condition of said boilers, the storage of said cargo, and all other attending facts and circumstances in his protest, purporting to be a narrative of the burning aforesaid. Your libellants prays that said master and men shall answer fully, under oath, all and singular, the interrogatories here propounded for them to answer, for greater certainty in the premises.

Fourth. That whilst said propeller was so on fire, the fire department of Detroit came to the rescue of said propeller, and with the steam fire-engines put out the fire, and throwing large quantities of water upon the vessel and her cargo, and overflooding her decks and throwing large quantities of water into her hold, in consequence of which the said goods of your libellants, so ladened aboard said propeller, were greatly damaged, and your libellants suffered loss
53 to the amount of six hundred dollars.

Fifth. That the custom of merchants and the course of the admiralty and merchants' law is, that said damage is, notwithstanding the exception of fire in the said contract of affreightment in such case happening, a case of general average loss; yet nevertheless said propeller permitted and allowed, without the consent of your libellants, the said cargo to be broken up and delivered to divers parties unknown to your libellants before an appraisement was had of said cargo, so your libellants are unable to ascertain the amount due to your libellants from the respective consignments aforesaid, by reason of which wrongful delivery your libellants claim that the whole of said damage should be paid by said propeller.

Sixth. That there is now due and unpaid to your libellants for said damage the sum of six hundred dollars, which they have demanded of the agent of said propeller, but which they refuse to pay, either the whole or any part thereof.

Seventh. That all and singular the premises are true, and
54 within the admiralty maritime jurisdiction of this honorable court.

Wherefore your libellants pray that process may issue against said propeller, her boilers, engines, machinery, boats, tackle, apparel, and furniture, &c., according to the course of admiralty, and that the said propeller may be arrested, and that the owners and master may aver, under oath, all and singular the premises, and that said propeller may be condemned and sold to pay the damage aforesaid together with costs. And that this honorable court would be pleased to grant such other and further relief in the premises as to right and justice may appertain and require, and as this court is competent to give in the premises.

ILLUSTRIOUS REMINGTON.
HIRAM REMINGTON.
ALFRED D. REMINGTON.
By HIRAM M. CHASE, *Att'y in fact.*
CHASE, MUNSON & SORAIN,
Libellants' proctors.

On the 18th day of October, A. D. 1861, personally appeared before me Hiram M. Chase, the attorney in fact of Illustrious Remington, Hiram Remington and Alfred D. Remington, the aforementioned libellants, and was sworn to the truth of the foregoing facts. And said deponent further states upon his oath that he was the
55 attorney in fact of said J. Remington & Sons.

H. M. CHASE.

Subscribed and sworn to before me this 18th day of October, 1861.

FRED. W. COLE, *U. S. Com'r.*

Schedule A.

32	reams	17	lbs.	folio	paper or stationery.
$43\frac{16}{20}$	reams	14	"	"	paper or stationery.
20	reams	16	"	"	paper or stationery.
58	reams	15	"	"	paper or stationery.
$153\frac{16}{20}$					
8	reams	17	"	"	paper or stationery.
20	reams	16	"	"	paper or stationery.
22	reams	15	"	"	paper or stationery.
10	reams	14	"	"	paper or stationery.
213_{20}					

Endorsed: Filed Oct. 18, 1861.

WM. H. BRADLEY, *Cl'k.*

Stipulation.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

District court, October term, A. D. 1861.

Whereas a libel was filed in this court on the 18th day of October, A. D. 1861, by Illustrious Remington, Hiram Remington, and
56 Alfred D. Remington, firm of I. Remington & Sons, against the "propeller Buckeye," boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellants and Chancy M. Cady, their surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or their surety execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars. Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

I. REMINGTON & SONS,
By H. M. CHASE, *their att'y.*
CHAUNCY M. CADY.

1695

Taken and acknowledged this 18th day of October, A. D. 1861, before me,

FRED. W. COLE, *U. S. Com'r.*

57 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Chancy M. Cady, party to the above stipulation, being duly sworn, depose and say that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all debts.

CHAUNCY M. CADY.

Sworn this 18th day of October, A. D. 1861, before me.

FRED. W. COLE,
U. S. Com'r.

Endorsed: Filed Oct 18th, A. D. 1861.

WM. H. BRADLEY, *Clerk.*

Monition.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the marshal of the northern district of Illinois, greeting: Whereas a libel hath been filed in the district court of the United States, in and for the northern district of Illinois, on the eighteenth day of October, in the year of our Lord one thousand eighteen hundred and sixty-one, by Illustrious Remington, Hiram Remington, and Alfred D. Remington, firm of I.
58 Remington & Sons, against the propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer, all and singular, the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of six hundred dollars, the damages alleged in said libel, besides costs of suit: you are therefore commanded to attach the said propeller Buckeye, her boiler, engines, machinery, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in some daily newspaper printed in the city of Chicago for fourteen days previous the day of trial, and by notice posted up in the most public manner for the space of fourteen days at or near the place of trial, of such seizure and libel, to all persons claiming the said propeller Buckeye, her boilers, engines,
59 machinery, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel; and that they be and appear before the said court to be held in and for the northern district of Illinois at the United States court-room, in the city of Chicago, in said district, on the first Monday in November next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then

and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the honorable Thomas Drummond, judge of the said court, this 18th day of October, in the year of our Lord one thou-
[L. S.] sand eight hundred and sixty-one, and of our independence the eighty-sixth year.

WM. H. BRADLEY, *Clerk.*

I have, this 18th day of October, A. D. 1861, executed this
60 writ by attaching the within-named propeller Buckeye, and have, on the same day, released said propeller from custody, upon the claimants giving bond, as required by law, for such release.

J. R. JONES, *U. S. Marshal.*
By GEO. L. WEBB, *Deputy.*

Bond.

Know all men by these presents that Stephen Clary, of Chicago, Illinois, as principal, and Zebulon M. Hall, of Chicago, county of Cook, and State of Illinois, sureties, are held and firmly bound unto Illustrious Remington, Hiram Remington, and Alfred D. Remington, in the penal sum of twelve hundred dollars, to be paid unto the said Illustrious Remington, Hiram Remington, and Alfred D. Remington, which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at Chicago, the 18th day of October, in the year of our Lord one thousand eight hundred and sixty-one.

Whereas in a certain cause, civil and maritime, moved
61 and prosecuted in the district court of the United States of America for the northern district of Illinois on behalf Illustrious Remington, Hiram Remington, and Alfred D. Remington, against the propeller Buckeye, her boilers, engines, machinery, boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said propeller, her boilers, engines, machinery, boats, tackle, apparel, and furniture, which said warrant is now in the hands of J. R. Jones, marshal of the said district, or in virtue of which said warrant the said propeller, her boilers, engines, machinery, boats, tackle, apparel, and furniture, has been arrested by J. R. Jones, marshal, and are now in his custody.

Now, therefore, the condition of this obligation is such, that if the above bounden Stephen Clary, the claimant of said propeller, her boilers, engines, machinery, boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of said court in the aforesaid cause, then this obligation shall be void; otherwise it shall remain in full force and virtue.

STEPHEN CLARY. [SEAL.]
ZEBULON M. HALL. [SEAL.]

62 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Zebulon M. Hall, being duly sworn, depose and say that he is a resident of the northern district of Illinois, and that he owns property in said district, subject to execution, worth twelve hundred dollars over and above all just debts and liabilities.

ZEBULON M. HALL.

Sworn to and subscribed before me this 18th day of Oct., A. D. 1861.
WM. H. BRADLEY, *Cl'k.*

Endorsed: Approved.

THOMAS DRUMMOND.

Endorsed: Filed this 4th day of November, A. D. 1861.
WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 6th day of November, A. D. 1861, come the respondents, the Northern Transportation Company, by its proctors, and file their claim and stipulation for costs herein, which reads in the words and figures following, to wit:

63 *Claim.*

To the honorable Thomas Drummond, judge of the district court of the United States, within and for the northern district of Illinois:

The Northern Transportation Company, of Chicago, a corporation duly incorporated by virtue of the laws of the State of Ohio, owners of the propeller Buckeye, her tackle, apparel, and furniture, intervening for its interest in the said propeller Buckeye, her tackle, apparel, and furniture, appear before this honorable court and claim the said propeller Buckeye, her tackle, apparel, and furniture, and states that it is the true and bona fide owner thereof, and that no other person is the owner thereof; and therefore the said claimant prays that this honorable court will be pleased to decree restitution for the same to it, said Northern Transportation Company of Ohio, and otherwise right and justice to administer in the premises.

P. CHAMBERLAIN, *Vice Pres't.*

Sworn to October the 25th, A. D. 1861, before me.
EDWARD P. TOWNE, *Notary Public.*

Endorsed: Filed Nov. 6, 1861.

WM. H. BRADLEY, *Cl'k.*

64 *Claimant's stipulation.*

District court of the United States for the northern district of Illinois.

Whereas a libel was filed in this court on the eighteenth day of October, A. D. 1861, by Illustrious Remington, Hiram Remington,

and Alfred D. Remington, against the propeller , her boilers, engines, machinery, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas a claim has been filed in the said cause by the Northern Transportation Company of Ohio, and the said Northern Transportation Company of Ohio and Stephen Clary, surety, the parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or Stephen Clary, surety, execution may issue against their goods, chattels and lands, for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and
65 fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO,
By P. CHAMBERLAIN, *Vice Pres'd't.*
STEPHEN CLARY.

Taken and acknowledged this 6th day of Nov., A. D. 1861, before me,
WM. H. BRADLEY, *Cl'k.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

, part to the above stipulation, being duly sworn, depose and say that he reside in the northern district of Illinois, and are worth the sum of five hundred dollars over and above all their debts and liabilities.

STEPHEN CLARY.

Sworn this 6th day of Nov., A. D. 1861, before me.
WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed this 6th day of November, A. D. 1861.
WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 29th day of November, A. D. 1861, the respondent, the Northern Transportation Company, by
66 its proctors, came and filed their answer herein in the words and figures following, to wit:

In the district court of the United States within and for the northern district of Illinois, in admiralty.

The answer of the Northern Transportation Company of Ohio, a company incorporated under the laws of the State of Ohio, to the libel filed in the district court of the United States within and for the northern district of Illinois, by Illustrious Remington, Hiram Remington, and Alfred D. Remington, against the propeller Buckeye, her tackle, engines, boilers, apparel, and furniture.

And now comes the said Northern Transportation Company, and saying and reserving to itself all and all manner of exceptions to said libel, and the several matters and things therein contained, answering, says:

1699

First. That they are the true and bona fide owners of said propeller Buckeye, her tackle, apparel, and furniture, boilers and engines, and no one else the owners thereof.

Second. That the first articulation is true.

67 Third. That it is true that said propeller was at the port of Cape Vincent, and did take on board the goods mentioned in said bill of lading, consigned and shipped as in said bill of lading as described, and had on board and take on board divers and other goods and merchandize, a copy of which bill of lading is attached to this answer. This respondent does not know whether these libellants are the owners of said goods so shipped and consigned, nor do they know the value thereof; and therefore they neither admit or deny the allegations in said articulation in regard to the value or ownership of said property, but demand strict proof in regard thereto; that said goods were consigned to W. Tanner, ag't, Chicago, and purported to be shipped by S. Bickford, ag't of the Watertown and Rome railroad, for the account and at the risk of whom it might concern; that they do not know the condition in which said goods were at the time they were shipped on said propeller; that said bill of lading states the condition and terms of shipment, and they refer for greater certainty to the same; that the owner or shipper assumed in and by said bill of lading, the dangers of navigation, fire, and collisions, and

68 the allegations in said libel that the "dangers of navigation were alone excepted," are untrue. It is true that said propeller did start on her voyage with an assorted cargo about the day therein stated; that they do not know the value of the cargo laden on board of said propeller.

Fourth. Respondent, further answering, says to said third articulation, that said propeller Buckeye proceeded on her voyage and arrived in safety at the port of Detroit about the 28th day of July, A. D. 1861; that said propeller, when she left the port of Cape Vincent, and when she arrived at the port of Detroit, and when the accident happened hereinafter set forth, was staunch, tight, well fitted, sound, manned, and guarded against the danger of navigation and fire, and for the intended voyage, and that the accident hereinafter mentioned did not result from any fault or negligence on the part of the officers, crew, and owners of said propeller, or any insufficiency or insecurity in said propeller Buckeye, her tackle, engines, boilers, apparel, or furniture; that it is true that as, in said articulation mentioned,

69 *that* about half-past five o'clock a. m. of said 28th day of July, 1861, at the port of Detroit, a fire broke out in said propeller, about her boiler, as in said articulation is alleged; that respondent cannot say how the fire broke out or originated, but the same originated from a cause or causes to your respondent unknown, but, as they allege and charge, without any fault or negligence of theirs, or of the officers or crew of said propeller, or of your respondent; that the facts connected with said fire are as set forth in the answer to the fourth articulation; that the main portion, if not all, of said cargo, was stored in the main or fore hold of said propeller, under deck; that at the time of the happening of the fire hereinafter set forth, the master of said propeller, Alfred W. Rosman, appeared before Addison Man-

dell, a notary public of Detroit, in the county of Wayne and State of Michigan, and noted a protest, which they are ready to produce when required, and which they submit to the court, is as clear and definite as they could make it, and which was noted in due form of law.

70 Fifth. Respondent, further answering as to said fourth articulation, says: that said fire broke out near the forward part of the boiler at about half-past five o'clock a. m. on the 28th day of July, A. D. 1861; that the first knowledge they had of said fire was that the flames burst out about said boiler; that the officers and crew proceeded to use every exertion to put out said fire, and while they were doing so the steam-engines, in charge of the fire department of the city of Detroit, came to said propeller and took charge of the extinguishing the fire, taking it out of the hands of the officers and crew of said propeller, and extinguishing said fire by throwing water on the same; that the goods of the said libellants were stowed in the main hold of said propeller, and under deck; that said libellants' goods were stowed under the hatch in the fore or main hold, as well as the entire cargo, and all the cargo was alike exposed to the fire; that no more injury was done to said propeller and cargo than was necessary to extinguish the flames; that water was discharged upon said propeller and cargo, and all the cargo and the vessel was alike exposed to damage and fire and injury from the water used

71 to extinguish the flames. That dangers or injury from fire is one of the exceptions contained in said bill of lading; that none of the cargo was sacrificed for the safety of the rest, or of the vessel, and if the plaintiffs' goods were injured by the water, it resulted from the leakage of the boxes or cases in which the same were, and if they had been tight the goods would not have been injured.

Sixth. Respondent, further answering, says to the fifth articulation for answer, that they are informed, and believe, and so charge the fact to be, that it is not true; that by the custom of merchants, and the course of admiralty and maratime law, it is a case of general average, as in said articulation is alleged, and that they deny that it is a case for general average contribution, and they deny that the whole of said damage, even if it is a case of general average contribution, should be paid by said propeller Buckeye; on the contrary, said respondents allege and charge, that if, in the opinion of the court, said claim should be decided to be a claim of general average contribution, which they are informed and believe, and so charge the fact

72 to be, is not the case, that then the libellant has only a claim for such an amount, as by the law of such case he would be entitled to, a general average being made up, which your respondents claim can be made up and ascertained; and if there is a claim for general average, or if this court should decide the libellants have such claim, that the same may be ordered to be made up, and the several owners of the cargo on board may be compelled to contribute, and for which purpose they stand ready to produce, when required, the bills of lading of said voyage showing the freight lists; but they must emphatically deny that the libellants are entitled to a general average contribution, or that they have any claim against your respondent or said propeller.

Seventh. Respondents, for answer to sixth articulation, says that they deny said articulation; and they deny that the libellants have a claim against said propeller for the sum claimed in said libel, or any sum; that they have no knowledge to what extent said goods
73 were injured. Respondents, having fully answered said libel, pray to be hence dismissed with their costs and for restitution.

THE NORTHERN TRANSPORTATION COMPANY OF OHIO.
By PHILO CHAMBERLAIN, *Vice President.*
H. F. WAITE, *Respondent's Proctor.*

UNITED STATES OF AMERICA,
Northern District of Illinois.

Philo Chamberlain, being duly sworn, says he is the Vice President of said Northern Transportation Company of Ohio; that he has heard the above answer read and knows the contents thereof, and that he believes the several matters and charges therein contained to be true.

PHILO CHAMBERLAIN.

Subscribed and sworn to this 26th day of November, 1861,
[L. S.] before me,

EDWARD P. TOWNE,
Notary Public.

Endorsed: Filed Nov. 29, 1861.

WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on the 5th day of December, A. D.
74 1862, in the record of the proceedings of said court in said cause is the following entry, to wit,

ILLUSTRIOUS REMINGTON, HIRAM REMINGTON, and ALFRED REMINGTON
v.
PROPELLER BUCKEYE.
} Libel.

Now come the parties, by their proctors, and thereupon this cause is set down for hearing on the libel, answer, and proofs on file, and after hearing the arguments of advocates the court takes said cause under advisement.

Proofs.

ILLUSTRIOUS REMINGLON *et al.*
v.
PROPELLER BUCKEYE.

The depositions of Frederick W. Whitehouse and Morty Lynch, taken before Samuel Starkweather, jr., commissioner, on the19th and 23d days of May, A. D. 1862, respectively:

I reside in the city of Cleveland, State of Ohio, and my oc-
75 cupation is that of an engineer on steam vessels. I am at this

time the first engineer of the steam propeller Wisconsin, now lying at the port of Cleveland, and loading for Ogdensburgh, N. Y. During the season of 1861 I was second engineer on board on the steam propeller Buckeye, belonging to the Northern Transportation Company, and had been on her in that capacity the two years previous. On the 28th day of July, 1861, at about twenty minutes past five o'clock a. m., we reached Detroit, on our way from Ogdensburgh to Chicago. At this time I was on duty, and had been for four hours previous. The first engineer was in bed. We had been alongside of the dock at Detroit about ten minutes, according to the best of my recollection, when I discovered in the engine-room the appearance of smoke. I called to the fireman, Morty Lynch, who was then in the fire-hold, and asked him if there was anything on fire? His reply was: Nothing; everything is all right. Not feeling satisfied, I took a light and went down and examined for myself, and could not discover anything on fire. I then returned on deck and stood by the gangway a few minutes, when I went down again, not
76 feeling easy. This time I went with a light to the forward end of the boiler, and examined closely, and could see neither fire nor smoke. I then returned to the deck again, and from the deck looked upon the top of the boiler, and there, at the forward end of the boiler, under the deck, I discovered a little fire. The main deck over the boiler at that point had taken fire, and a place about as large as my hand, as near as I can judge, was in a blaze. At this time our pony engine, by means of which we threw water to extinguish fires, was in the fire-hold, and ready for use so soon as we could open the valve. So soon as I discovered the fire over the boiler I called out to the fireman in the hold, and told him to start the pony, and at the same instant I took the hose in the direction of the fire. The fireman was unable to open the valves, in consequence of the smoke, which drove him out of the hold. I then went down myself to try to get the engine in operation, but the smoke was so bad I could not stand it, and was obliged to return on deck. By this time the first engineer had got out, and he went down and
77 tried it, but with no better success. The smoke drove him back. I had already tried to open the fire-cock, so that the steam and water might be let out upon the fire, but the handle broke and I could not do it. We then, all hands, applied water with buckets, to endeavor to extinguish the fire in that way, but in spite of all our efforts the fire gained upon us. Our big bell had been rung upon the first discovery of the fire, and that communicated the alarm to the town, and very soon brought to our aid the steam fire-engines of Detroit, by means of which the fire was extinguished, but not until they had nearly filled the vessel with water.

Questions by counsel for claimant.

No. 1. What protection, if any, had the Buckeye between the boiler and the main deck?

Ans. There was a sheeting of zinc above the boiler all along under the main deck.

No. 2. How, then, do you account for the deck taking fire in the manner it did.

78 Ans. My supposition is that the heat had drawn the plates of zinc apart, so that small portions of the deck were exposed to the heat from the boiler. I do not know that such was the fact, but this is the only rational way in which I can account for the fire.

No. 3. At the time the fire was discovered, how many men were up and on duty on board the propeller?

Ans. All hands but two, some fifteen or sixteen in number, and every possible exertion was made to stop the fire before the steam fire-engines came.

No. 4. If you know of any want or care or of any negligence that led to the fire, you will please to state what it was.

Ans. There was no negligence or want of care on the part of the officers and men of the Buckeye. The boat was in good condition, and to all appearance as well protected against any casualty of the kind as any vessel I was ever on board of. The fire was entirely accidental, and could not have been prevented by any ordinary precaution.

No. 5. How was the vessel relieved of the water thrown
79 into her hold by the steam fire-engines, and how soon did she pursue her voyage to Chicago?

Ans. The water was pumped out by the same engines that threw it in, and it was only five hours from the time we reached the dock in Detroit, until we were under way again for Chicago.

FREDERICK W. WHITEHOUSE.

At this point the examination was adjourned until Friday May 23d, A. D. 1862, at two o'clock p. m., at which time the examination proceeded, and the said Morty Lynch appearing, and being by me first duly sworn, and by me carefully examined to testify to the truth, the whole truth, and nothing but the truth as to the matter in controversy, deposed and saith as follows:

I live in Ogdensburgh, State of N. Y., where I have resided for the last nine years. My age is twenty-three years last November. During the last six years I have been employed as fireman in steam propellers on the northwestern lakes. I have been employed in that capacity on board the steam propeller Buckeye, belong-
80 ing to the Northern Transportation Company, since the Spring of 1859, and am still attached to said vessel as fireman.

On Sunday morning, July 28, 1861, at about five and a half o'clock a. m., we arrived at Detroit, on our way from Ogdensburgh to Chicago. We had not been at the dock more than ten or fifteen minutes when, as I was attending to my duty down in the fire-hold, I heard the second engineer call out to me from the engine-room, which was on the main deck. His name was Frederick Whitehouse, and he asked me if there was anything burning down below. I told him no, not that I could discover; everything looked right. After a little, he came down into the fire-hold; he had a lamp in his hand, and looked around the boiler and found nothing wrong as far as I know. He

came down the second time and made an examination. He then went up on the main deck, and soon called out to me that the deck was on fire, and said I must start the pony, meaning the small engine in the fire-hold; and for such purpose I tried to comply with his orders, but the smoke arising from the burning tar and pitch
81 and paint was so bad that I could not succeed in opening the valves. It drove me out of the fire-hold; it would have choked me to have remained there. When I got on deck I saw the blaze under the main deck and over the boiler. It was spreading rapidly. The second engineer at my request went into the fire-hold, or attempted to go there, to see if he could start the pony, but the smoke drove him back directly. As soon as the fire was discovered by the second engineer, our big bell was rung to give the alarm. This started the town bells, and very soon the steam fire-engines of Detroit came to our aid. In the mean time the captain, mate, and all hands of us, were hard at work with fire-buckets, carrying and throwing water, and endeavouring to extinguish the fire in that way. Although we threw a great deal of water, and probably kept back the fire some, we could not subdue the fire entirely until the steam-engines came, which was then put out by the steam-engines pumping in water.

Question. How long did you remain in Detroit after the fire was discovered?

82 Ans. I should think we were in Detroit only about six hours until we were under way again for Chicago.

No. 2. What occasioned that fire?

Ans. I don't know, unless it was that the heat from the boiler was communicated to the deck. I know no other cause.

No. 3. What protection had the lower surface of the main deck against the heated boiler?

Ans. The lower surface of the deck was sheeted with zinc, which I suppose to be a protection against the heat.

No. 4. Is this an ordinary or an extraordinary precaution used to protect the deck from the heat of the boiler, so far as your experience extends?

Ans. I have never seen the zinc used on any other propeller for the same purpose, but I think it a good plan.

No. 5. How long had you been on duty when the fire broke out, and where was you?

Ans. I had been on duty three hours, and was, the most of the time, in the fire-hold.

No. 6. State how frequently, during those three hours, you examined the gauge-cock of the boiler.

83 Ans. About once in every ten minutes, on an average.

No. 7. What water did they denote in the boiler?

Ans. We kept all the while four cocks scant and three cocks flush. Our boiler had but four cocks.

No. 8. What was the highest rate of steam you carried that night up to the time of your arrival at Detroit?

Ans. At no time over sixty-five pounds to the inch when running.

No. 9. What combustible matter did you use that night with which to make steam?

Ans. We used wood; nothing else whatever.

No. 10. What kind of wood?

Ans. It was dry, mixed wood.

No. 11. If you know of any neglect or mismanagement on the part of any of the officers or crew, or any other person on board the Buckeye, which occasioned the fire, you will now state what it was.

Ans. I know nothing of the kind. So far as I know the fire was purely accidental.

MORTY LYNCH.

84 And afterwards, to wit, on the 30th day of September, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

WILLIAM F. TUCKER *v.* PROPELLER BUCKEYE. ILLUSTRIOUS REMINGTON, HIRAM REMINGTON, and ALFRED REMINGTON, *v.* PROPELLER BUCKEYE.	Libel.

Now come the parties, by their proctors, and by an agreement the above-entitled causes are consolidated, and the causes having heretofore been submitted to the court, and the court having fully considered, and being now fully advised thereon, pronounces for the respondents.

It is thereupon considered and adjudged by the court that the libels be dismissed without prejudice at the costs of the libellants, and that the respondents do have and recover of and from the

85 said libellants and their stipulators, the costs and charges herein, and that execution issue therefor, and the libellants, by their proctors, pray an appeal to the circuit court.

Appeal Bond.

UNITED STATES OF AMERICA,
Northern District of Illinois.

District court, ——— term, A. D. 18—.

Whereas a libel was filed in district court, on the ——— day of ———, by W. F. Tucker against the propeller Buckeye, her engines, machinery, &c., boats, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned; and whereas a claim and answer has been filed in the said cause by ——— ———, praying that said libel be dismissed, which was allowed, and the said libelants having prayed an appeal, and R. Rae, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the appellant or their surety execution may issue against

their goods, chattels, and lands, for the sum of two hundred
86 and fifty dollars. Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the appellees above named shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

R. RAE.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

R. Rae, party to the above stipulation, being duly sworn, deposes and says: that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

R. RAE.

Sworn this 12th day of Oct., A. D. 1863, before me,
WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed Oct. 12, 1863.
WM. H. BRADLEY, *Cl'k.*

87 NORTHERN DISTRICT OF ILLINOIS, *ss*:

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record of the district court of the United States for the northern district of Illinois in the case of Illustrious Remington *et al. v.* the Propeller Buckeye, and William F. Tucker *v.* the Propeller Buckeye, and made under and pursuant of the stipulation of the parties by their several proctors, and pursuant to the fifty-third rule of the Supreme Court adopted in December term thereof, A. D. 1854.

In testimony whereof, I have hereunto set my hand and affixed the
[SEAL.] seal of said court at office in Chicago, this 13th day of October, A. D. 1863, and of our independence the 88th year.

WM. H. BRADLEY, *Cl'k.*

[U. S. rev. stamp.]

Endorsed: Filed Oct. 14, 1863.
WM. H. BRADLEY, *Cl'k.*

88 And afterwards, to wit, on Wednesday, the 21st day of October, A. D. 1863, in the record of the proceedings of the circuit court in said cause is the following entry, to wit:

WILLIAM F. TUCKER
v.
PROPELLER BUCKEYE,
and
ILLUSTRIOUS REMINGTON,
HIRAM REMINGTON, and
ALFRED REMINGTON,
v.
PROPELLER BUCKEYE.
} Appeal.

Now come the parties, by their respective proctors, and thereupon this cause is set down for hearing, and the court, after hearing the evidence and the argument of advocates, takes time to consider of the same.

And afterwards, to wit, on Monday, the twenty-sixth day of October, A. D. 1863, in the record of the proceedings of the circuit court in said cause in the following entry, to wit:

89

WILLIAM F. TUCKER
v.
PROPELLER BUCKEYE,
and
ILLUSTRIOUS REMINGTON,
HIRAM REMINGTON, and
ALFRED REMINGTON,
v.
PROPELLER BUCKEYE.
} Appeal.

The court having considered, and being now fully advised of the matters herein submitted, pronounces for the respondents, and affirms the decree of the district court.

It is thereupon considered and adjudged by the court that the libels be dismissed, and that the respondents do have and recover of and from the libellants the costs and charges herein, amounting to the sum of ——— dollars and ——— cents, and that execution issue against the libellants and their stipulators therefor, and thereupon the libellants pray an appeal to the Supreme Court of the United States.

90 And afterwards, to wit, on the 6th day of November, A. D. 1863, the said libellant, by his proctor, files his prayer in appeal, as follows, to wit:

Circuit court of the U. S. for the nor. dis. of Illinois.

WILLIAM. F. TUCKER, libellant and appellant,
ag'st
THE PROPELLER BUCKEYE, respondent and appellee.

To the honorable the Supreme Court of the United State:

The appeal of William F. Tucker, the above named libellant and appellant, respectfully sheweth, that on the second day of October, A. D. 1861, the above named William F. Tucker filed his libel in the district court of the United States for the northern district of

Illinois against the propeller Buckeye, her tackle, apparel, boats, machinery, and furniture, in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to merchandize belonging to him, the said William F. Tucker, by
91 reason of fire occurring on board of the said propeller Buckeye, and damaging the said merchandize, the property of the aforesaid William F. Tucker; and that the said propeller Buckeye was cited by a monition issued upon said libel to appear and answer, under oath, all and singular the matters articulately propounded in said libel, and said propeller Buckeye having appeared, by her proctor, and filed her answer to said libel, and the said libellant having replied thereto, and such proceedings were had in the said cause that on the thirtieth day of September, A. D. 1862, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the libel be dismissed, and that the said respondent receive against the libellant the proper costs taxed in the suit; and that after such final decree the libellant duly appealed therefrom to the circuit court of the United States for the northern district of Illinois, and the said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court, that afterwards, on the twenty-sixth day of October, A. D. 1863, the said circuit court made a final decree
92 in the said cause, whereby it was decreed that the said libel be dismissed with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that this time said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and a decree made that said libellant receive against respondent his full damages, together with interest and costs, or such other decree as to the said Supreme Court shall seem just.

R. RAE, *Proctor.*

Endorsed: Filed Nov. 6, 1863.

WM. H. BRADLEY, *Clerk.*

93 And on said sixth day of November, A. D. 1863, said libellant filed his bond in appeal, in the words and figures following, to wit:

Supreme Court, U. S. of America.

WILLIAM F. TUCKER, libellant and appellant,
vs.
THE PROPELLER BUCKEYE, respondent and appellee. } In appeal.

Know all men by these presents that we, William F. Tucker,

principal, and Robert Rae, surety, our heirs, executors, administrators, and assigns, are held and firmly bound unto the above-named propeller Buckeye in the sum of five hundred dollars, to be paid to said propeller Buckeye. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated at Chicago, the sixth of November, in the year of our Lord one thousand eight hundred and sixty-three. Whereas the above named William F. Tucker
94 hath prosecuted an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit, by the United States circuit court for the northern district of Illinois, in the eighth circuit: Now, therefore, the condition of this obligation is such, that if the above-named William F. Tucker shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. F. TUCKER.
ROB'T RAE.

Sealed and delivered in presence of—

WM. H. BRADLEY, *Clk.*

U. S. A., *N. Dis. of Ill's, ss:*

William F. Tucker and Robert Rae, being duly sworn, deposes and says, that they, and each for himself, are and is worth five hundred dollars over and above their debts and liabilities.

ROB'T RAE.
WM. F. TUCKER.

Sworn to and subscribed before me this 6th day of Nov., A. D. 1863.

[U. S. rev. stamp.] WM. H. BRADLEY, *Clerk.*

95 Endorsed: Security approved.

THOMAS DRUMMOND.

Filed Nov. 6th, 1863.

WM. H. BRADLEY, *Clk.*

And afterwards, to wit, on the 7th day of November, A. D. 1863, the citation issued in this behalf was returned and filed, and reads as follows, to wit:

U. S. circuit, northern district of Illinois.

WILLIAM F. TUCKER, libellant and appellant,
v.
THE PROPELLER BUCKEYE, respondent and appellee.

Citation.

By the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, in the eighth circuit.

To the Propeller Buckeye:

Whereas William F. Tucker, appellant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district
96 of Illinois, in the eighth circuit, made in favor of you, the said propeller Buckeye, against the said William F. Tucker, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 1st day of the December term, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Chicago, in the northern district of Illinois, in the eighth circuit, the sixth day of November, in the year of our Lord 1863, and of the independence of the United States the 88th.

THOMAS DRUMMOND.

Endorsed:

U. S. CIRCUIT COURT,
Nor. dis. of Illinois, ss:

I have, this seventh day of November, A. D. 1863, served a copy of the within citation on Waite and Towne, the att'ys for respondent.

ORRIN SMITH, JR.

[U. S. rev. stamp.] Sworn to and subscribed before me this 7th day of November, A. D. 1863.

WM. H. BRADLEY, *Cl'k.*

Endorsed; Filed Nov. 7, 1863.

WM. H. BRADLEY, *Cl'k.*

97 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true copy of the record and proceedings had in the cause wherein William F. Tucker and others were libellants, and the propeller Buckeye respondent, the Northern Transportation of Ohio claimants, as the same appears from the records of said court, now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in Chicago, this 23d day of No-
[L. S.] vember, A. D. 1863, and of our independence the 88th year.

[U. S. rev. stamp.] WILLIAM H. BRADLEY, *Clerk.*

Filed 11th December, 1863.